

Department of Defense (DoD)
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Preface

In this issue of the Civilian Personnel Management Service (CPMS) ***Digest of Significant Classification Appeal Decisions***, we present synopses of several noteworthy classification appeal decisions. We have selected cases that we believe illustrate a complex or troublesome classification issue, and we have briefly described the manner in which the issue was resolved. While the intent of the ***Digest*** is to increase classification consistency within the Department of Defense, ***Digest*** articles are not intended to restrict the use of classification judgment in situations where the guidance is not applicable. Rather, our articles present what we consider sound classification rationale used in a specific case. That rationale may or may not be appropriate for all similar cases.

The ***Digest*** is not intended to supersede Office of Personnel Management classification standards. In no case should a ***Digest*** article be viewed as an alternative to reading and properly discerning the overall intent of standards.

We welcome your comments and suggestions for improving future issues of the ***Digest***. Since the articles describe final appeal decisions, we cannot entertain rebuttals. Please send your comments and suggestions to: Civilian Personnel Management Service, Field Advisory Services Division (FAS), Classification Branch, 1400 Key Boulevard, Suite B-200, Arlington, VA 22209-5144. Should you have any questions, please call us at (703) 696-6301, Team 2, or DSN 426-6301, Team 2. Our e-mail address is class@cpms.osd.mil. This digest is also accessible through our web page, <http://www.cpms.osd.mil/fas/class&pay.htm>.

Case Number	1
Standard	OPM Job Grading Standard for the Motor Vehicle Operator Series, WG-5703 (April 1991)
Factor	Skill and Knowledge
Issue	Crediting WG-6 level work
Other References	OPM Job Grading System for Trades and Labor Occupations (Section II.C), pages 10-11

Identification of the Classification Issue

In this group appeal, the appellants were motor vehicle operators at a military base. Their positions had been downgraded from WG-6 to WG-5 as a result of the application of the revised job grading standard for the WG-5703 series. The appellants based their appeal on information, compiled over a one-month period, documenting the operation of motor vehicles over road conditions that were comparable to those at the WG-6 level.

Resolution

CPMS factfinding revealed that the appellants operated several different kinds of vehicles, including platform trucks, van trucks, cargo vans, and pickup trucks. Two of the cargo trucks had gross vehicle weights (GVWs) of 16,000 and 14,000 pounds, respectively, and two other cargo trucks had aGVW of 10,000 pounds. The remaining trucks, vans, and pickup trucks all had GVWs of less than 10,000 pounds. In addition, three of the trucks had equipment that enabled the drivers to tow trailers that they occasionally used when the cargo to be transported exceeded the capacity of the truck. The appellants operated these vehicles primarily on the base where all roads traveled consisted of asphalt or concrete constructed over flat surfaces. The speed limit on these roads was either 25 or 35 miles per hour. The appellants also drove off the base to various locations in and around two nearby major cities. The majority of all trips covered established routes; however, the appellants determined the best route, depending on the weather, the traffic, and the type of load transported.

CPMS determined that the appellants applied skill and knowledge equivalent to the WG-4, WG-5, and WG-6 levels. All of the on-base trips requiring the appellants to drive vehicles with a GVW of 10,000 pounds or less were equated to the WG-4 level. Trips made on the base with vehicles exceeding a GVW of 10,000 pounds and trips made off the base with vehicles having GVWs of 10,000 pounds or less were equated to the WG-5 level. The remaining off-base trips made with vehicles that had a GVW of 14,000 and 16,000 pounds appeared to match the WG-6 level. This level involves skill to operate vehicles that are higher, wider, longer, and heavier than those at lower grade levels. These vehicles typically have a GVW of more than 10,000 pounds and up to 26,000 pounds and require the driver to apply knowledge to make more difficult judgments concerning loading and arranging cargo, overhead and side clearances, turning radius, and braking distance. In addition, drivers at this level must be more selective in determining the routes because laws restrict the use of some roads by larger vehicles.

A careful examination of the documentation provided by management revealed that during the one-month period covered, only 22 of the off-base trips required the use of the vehicles weighing over 10,000 pounds on roads located off base. Five of these trips to sites 10 and 12 miles away from the base presented traffic conditions of the variety and complexity equivalent to the WG-6 level. This amounted to less than one trip per month for each driver, or slightly more than one trip every two months. On these trips, the drivers regularly encountered uneven terrain, unimproved roads, and/or heavily congested areas on an interstate highway, paved and graveled surfaces, and city streets.

Under the Federal Wage System, a mixed-grade job is graded on the basis of the duties that: (1) involve the highest skill and qualification requirements of the job and

(2) are a regular and recurring part of the job, even if the duties involved are not performed for a majority of the employee's time. No specific percentage-of-time is required for the higher level duties to control the grade of a position. However, special caution must be exercised in grading the position if the higher graded duties constitute a small portion of the job. In such cases, it can incorrectly be assumed that the work

requires the full range of duties and qualifications necessary to warrant the higher grade when, in actuality, it does not.

CPMS considered a number of weakening factors in grading the skill and knowledge required by the appealed positions: (1) only two routes were available to the driver for the majority of the off-base trips--an interstate highway or two-lane county road; (2) off-post trips were normally single destination hauls, each offering the same two-route options; (3) nearly all off-base trips were made on the same short stretch of interstate highway; and (4) each driver averaged one trip every two months driving vehicles that equated to the WG-6 level. In view of the weakening factors identified, CPMS concluded that the appealed positions did not require the full range and level of skill and knowledge intended by the WG-6 criteria. Consequently, Skill and Knowledge was equated to the WG-5 level.

Case Number	2
Standard	OPM Position Classification Standard for Attorney Series, GS-905 (October 1959)
Factor	Nature of Cases or Legal Problems
Issue	Determining what constitutes "very large sums of money"
Other References	OPM Digest of Significant Classification Decision and Opinions, No. 16 (March 1992), page 8

Identification of the Classification Issue

The appellant served as legal counsel for an area office of a field operating activity. Her duties included the full scope of legal work associated with contract claims and appeals resulting from military construction activities carried out by private firms. Claims typically involved such matters as alleged differing site conditions, delays and impacts, and quantum determinations. The servicing personnel office credited Type II for Factor 1, but the appellant argued that her position should be credited with Type III legal cases because her work regularly involved contracts worth "about a million dollars" and, occasionally, more..

Resolution

Factor 1 measures the inherent difficulty of the legal and factual issues involved in a case or problem. Type III work is considered the most difficult legal work encountered in the Government. The GS-905 standard notes that cases involving large sums of money generally require special care and attention equivalent to other elements of difficulty. Thus, paragraph (3) of the criteria for Type III cases is intended to be equivalent to the types of complex cases described in paragraphs (1) and (2). Type III work, like the other two levels of work, is described in terms of the minimum characteristics of the range of difficulty it represents.

The monetary criterion in paragraph (3) of the Type III criteria, i.e., "about a million dollars," is an ~~example~~ of "very large sums of money." This example represents a threshold for the monetary criterion and is not to be viewed as a definitive requirement. When the GS-905 standard was published in 1959, a million dollars was considered an appropriate example of a very large sum of money, but this figure must be adjusted to recognize the high degree of inflation that has occurred since the standard was written. By using the Consumer Price Index to equate the 1959 dollar to the 1995 dollar, CPMS determined that a very large sum of money would be at least \$5.2 million. Several of the appellant's cases involved contracts with this monetary value, but the amount of money to be considered for Type III is the amount associated with the

claim or appeal because the standard addresses the amount contested. CPMS found that only two of the appellant's recent cases met the monetary criterion in paragraph (3) of Type III. This did not meet the requirement for frequently handling cases involving very large sums of money. In examining the remaining criteria in paragraph (3) of Type III cases, CPMS determined that interest in the appellant's cases was not nationwide in scope, but was limited to a specific geographic region. (Nationwide interest might be generated by claims handled at the highest level of an agency when portions of the contract are administered by field offices across the country.) Because the appellant's cases did not meet the full intent of the criteria, paragraph (3) of Type III could not be credited. Since the criteria in paragraphs (1) and (2) of Type III were also not met, CPMS credited Type II. Corresponding to this level, the appellant's cases involved difficult legal and factual issues because of the absence of clearly applicable precedents. Other cases were difficult because of the complexity of the facts or the laws and precedents involved.

Case Number	3
Standard	OPM Position Classification Standard for Attorney Series, GS-905 (October 1959)
Factor	Factor 2, Level of Responsibility
Issue	Crediting Level E for personal contacts required in trial work
Other References	N/A

Identification of the Classification Issue

The appellant's duties involved investigating, processing, and settling claims against the agency involving medical malpractice, products liability, motor vehicle accidents, and the like. The record showed that when suit was filed against the agency, the appellant participated with the Assistant U.S. Attorney responsible for defending cases before U.S. District Courts. His specific duties included preparing a litigation report, preparing motions and other legal documents, assisting in formulating trial strategy, preparing investigative reports, interviewing witnesses, taking depositions, and examining and cross-examining witnesses. The servicing personnel office credited Level C for Personal Work Contacts, but the appellant contended that his contacts associated with trial work warranted credit for Level E.

Resolution

The GS-905 standard measures Level of Responsibility in terms of four elements: the functions performed, the supervision and guidance received, the personal work contacts, and the nature and scope of recommendations and decisions. The functions performed provide perspective to the level of responsibility. This means that the functions described at each of the three defined levels of responsibility provide a context for evaluating the other three elements. Thus, the functions involved in trial, advisory, hearing, and legislative work have parallel types of contacts, recommendations, and decisions depicted at the three levels of responsibility.

Personal work contacts associated with trial work are included at both Level C and Level E of the standard. Therefore, to credit Level E for Personal Work Contacts, the contacts must occur in the performance of trial-related functions that meet Level E. At Level E, the attorney functions as the principal attorney in charge of the preparation and presentation of cases before administrative tribunals or before the courts, when the cases: (a) are of such scope that they may, in many instances warrant the assistance of one or more attorneys of lower grade or other specialists and (b) are of such importance that they frequently involve matching professional skills against some of the most distinguished and highly paid legal talent in

the country. The principal attorney exercises full responsibility for the development and presentation of the case. In the instant appeal, the appellant participated in the trial of cases before U.S. District Courts. In some cases, he served as a co-equal to the Assistant U.S. Attorney in the preparation of the agency's defense; however, he never served as the principal attorney in charge with full responsibility for the development and presentation of the agency's defense. Therefore, Level E could not be credited for Personal Work Contacts. CPMS found that the appellant's contacts did not exceed Level C. At this level, trial work requires skill in presentation, exposition, and argument in presenting cases to administrative hearings and to courts. The work includes examining and cross-examining witnesses, arguing motions before the court, and summarizing the agency's case. Accordingly, CPMS credited Level C for Personal Work Contacts.

Case Number	4
Standard	OPM Position Classification Standard for the Civil Engineering Series, GS-810 (June 1966), Part II
Factor	N/A
Issue	Distinguishing between GS-12 and GS-13 level positions
Other References	N/A

Identification of the Classification Issue

The appellant served as the Engineering Technical Manager (TM) for a major lock and dam project that was in the engineering /design phase. The project included a lock and dam system, stone revetment, dikes, control tower, coffer dams, and an access road. The servicing personnel office evaluated the position as Civil Engineer, GS-810-12, but the appellant argued that his responsibilities as Engineering TM for the lock and dam project presented a level of difficulty equivalent to the GS-13 level. One of the key issues presented by the appellant to support his argument was the inherent responsibility placed on the Engineering TM for a complex and precedent-setting project. He further compared his coordination responsibilities to those described in Illustration #3 of GS-13 level assignments.

Resolution

Proper application of standards requires the use of judgment rather than a mechanical matching of specific words and phrases in the standards. Thus, illustrations included in a standard must be viewed in the full context of the grade level they are intended to describe. The full intent of a particular grade level must be met in order for that grade to be assigned. Matching duties to illustrations without reading and discerning the full intent of the grade level can lead to inaccurate grade level determinations.

As Engineering TM, the appellant chaired the project's Design Team. This involved leading and coordinating the work of team members and the pre-construction, engineering, and design-related contributions from other divisions. The appellant was responsible for developing procedures and standards for the team, facilitating resolution of conflicting viewpoints among team members and high level functional officials, setting intermediate milestones to ensure compliance with overall project timeframes, and managing assigned project resources within allocated allowances. He initiated requests for supplemental studies by private sector firms and other elements of the command. He also reviewed all documents prepared for submission to higher echelons, serving as design spokesperson as required.

CPMS noted some similarities between the appellant's work assignment and the illustration; however, in examining the general grading criteria for the GS-13 level, CPMS found that the appellant's position fell short of this level in the areas of decisionmaking and authoritative external coordination and representation. Specifically, the requirement for higher level officials to review and approve design products limited the overall technical independence afforded the appellant. Thus, the appellant could not be viewed as the "technical authority" on all matters involving the project, which is a distinct characteristic of the GS-13 level. Likewise, CPMS found that the appellant's coordination responsibilities did not exceed the GS-12 level, which includes responsibility for developing schedules to ensure timely accomplishment of work, arranging to obtain data from outside sources, coordinating with counterparts in other areas to ensure consistency and compatibility of approach, and contacting outside activities to obtain cooperation, clearances, etc. While the appellant prepared and presented technical briefings to high level officials and non-government groups, the responsibility for explaining, negotiating, coordinating, and otherwise officially dealing with parties outside the organization rested with the Project Manager or higher level officials within the organization. In summary, while the appellant's position was similar to the cited illustration in some respects, CPMS found that the position did not fully meet the GS-13 criteria and was properly graded at the GS-12 level.

<u>Case Number</u>	5
Standard	OPM Position Classification Standard for Equipment Specialist Series, GS-1670 (November 1994)
Factor	Factor 4, Complexity
Issue	Crediting Level 4-4
Other References	N/A

Identification of the Classification Issue

The appellant served as maintenance officer for a field operating activity whose mission involved planning, designing, constructing, operating, and maintaining civil works projects. In this capacity, he was responsible for implementing the organization's Materiel Maintenance Program and Maintenance Plan in accordance with regulations and policies issued by higher echelons. The appellant also administered the local implementation and operation of materiel maintenance support programs and automated equipment utilization and maintenance records. In addition to knowledge of the Materiel Maintenance Program, the appellant used knowledge of the operational use and maintenance requirements of a variety of equipment, such as: sedans, pickups, drill rig trucks, tractors, graders, bulldozers, cranes, forklifts, survey and tow boats, small boats, boat trailers, barges, engines, generators, compressors, pumps, etc. The duties of the position included visiting worksites to evaluate equipment maintenance effectiveness at the sites and providing assistance in resolving individual equipment maintenance problems. The servicing personnel office credited Level 4-4 for Factor 4, but CPMS questioned whether this was the correct determination.

Resolution

Level 4-4 of the GS-1670 standard is distinguished from Level 4-3 by involvement in more than one of the broad equipment stages, such as preproduction and production or usage and disposal. Because Level 4-4 involves work in more than one broad equipment stage, the specialist must apply many different and unrelated processes and methods to accomplish the work. This requires making decisions that involve the assessment of unusual circumstances, variations in approach, and incomplete or conflicting data. The specialist decides how to plan the work and interprets considerable data to make decisions.

In the instant appeal, the work related almost exclusively to ensuring proper maintenance of the organization's equipment. Maintenance is one area of one broad equipment stage--usage. Thus, CPMS concluded that the appellant's work did not require him to apply many different and unrelated processes and methods, as would be the case for assignments covering several aspects of two or three different broad equipment stages. Furthermore, CPMS concluded that because the equipment for which the appellant was responsible was largely conventional with well preceded maintenance procedures and requirements, he was not required to make decisions that involved the assessment of unusual circumstances or variations in approach. CPMS acknowledged that the appellant's work was superficially similar to the last example at Level 4-4, involving extended visits to field installations or organizations maintaining or using assigned categories of equipment. However, CPMS found that the appellant's visits were limited in duration (i.e., 2-3 days) and did not involve a comparable scope of services in that they typically dealt with one or two specific issues. Accordingly, the appellant's work was not considered fully comparable to the example. Therefore, CPMS evaluated the complexity of the appellant's duties at Level 4-3. Corresponding to this level, the appellant's work consisted of various duties involving different and unrelated processes and methods, e.g., those related to different assignments within a single area of a broad equipment stage. The appellant made decisions on the basis of analysis of the issues involved in each assignment, e.g., issues involved in local implementation of maintenance support programs.

Case Number	6
Standard	OPM General Schedule Supervisory Guide (April 1993)
Factor	Factor 1, Program Scope and Effect
Issue	Crediting Level 1-4 for Scope
Other References	OPM Digest of Significant Classification Decisions and Opinions, No. 19 (August 1994), pages 3-4

Identification of the Classification Issue

The appellant's position was located in a field element of a logistics support activity of a major command. The organization served as the executive agent for management information systems and data for major and selected secondary items of equipment. The appellant supervised and managed activities of a division responsible for the functional development and maintenance of major item management information systems and the production and analysis of information from the systems. The division also provided central management and oversight of various force structure systems and processes to support various applications of the parent organization. The servicing personnel office assigned Level 1-4 for Scope, crediting the appellant with directing a segment of a program that involved the development of major aspects of key agency programs. The command disagreed with this determination and assigned Level 1-3. In his appeal, the appellant argued for credit for Level 1-4. While the intent of the criteria for Level 1-4 Effect was clear, Level 1-4 Scope required clarification.

Resolution

Level 1-4 Scope is appropriate for supervisors who direct work involving the actual development of major aspects of critical agency programs, i.e., the overall policies, goals and objectives, program plans, and directives. CPMS found that program development activities for the work directed by the appellant were carried out by organizational elements at the agency's headquarters. The appellant directed work that involved, indirectly, supporting major aspects of agency programs, rather than developing them. CPMS

further concluded that the information systems developed and maintained by the appellant's organization were important to the successful accomplishment of agency missions, but did not constitute "major aspects" of agency programs. Rather, those systems were viewed as tools used to support the decisions made in major program areas. Therefore, CPMS concluded that the work directed by the appellant did not meet the criteria at Level 1-4 involving the development of agency programs. Further examining the criteria for Level 1-4 Scope, CPMS concluded that the work also did not involve comparable highly technical programs, such as those carried out at major research and development centers. Nor did it involve major, highly technical operations at one of the Government's largest, most complex industrial installations. The illustrations indicate that such work is carried out by major organizational components of very large installations with multiple functions critical to the agency's overall mission. Accordingly, CPMS concluded that Level 1-4 could not be credited for Scope. Level 1-3 was the highest level that was fully met. Corresponding to the intent of this level (as reflected in the last illustration), the work directed involved administrative services provided in support of the command's headquarters operations, which included overall management and control of agency supply systems.